CONSTRUCTION

CALIFORNIA STATE UNIVERSITY,
CHICO

WILDCAT ACTIVITY CENTER

Audit Report 11-10
April 15, 2011

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<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>BOT</td>
<td>Board of Trustees</td>
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<tr>
<td>CM</td>
<td>Construction Manager</td>
</tr>
<tr>
<td>CM at Risk</td>
<td>Construction Manager at Risk</td>
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<tr>
<td>CPDC</td>
<td>Capital Planning, Design and Construction</td>
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<tr>
<td>CRB</td>
<td>Certification Review Board</td>
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<tr>
<td>CSU</td>
<td>California State University</td>
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<tr>
<td>CSUC</td>
<td>California State University, Chico</td>
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<tr>
<td>ESA</td>
<td>Extra Service Authorization</td>
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<td>EO</td>
<td>Executive Order</td>
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<td>GMP</td>
<td>Guaranteed Maximum Price</td>
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<td>LEED</td>
<td>Leadership in Energy and Environmental Design</td>
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<td>OUA</td>
<td>Office of the University Auditor</td>
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<td>PDC</td>
<td>Planning, Design and Construction</td>
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<td>SUAM</td>
<td>State University Administrative Manual</td>
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<td>WAC</td>
<td>Wildcat Activity Center</td>
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EXECUTIVE SUMMARY

At its January 2011 meeting, the Board of Trustees directed the Office of the University Auditor (OUA) to review construction activity. Construction auditing had been performed by KPMG since fiscal year 1997/98 with coordination from the OUA. In fiscal year 2008/09, OUA staff began performing construction audits.

We visited the California State University, Chico campus and the offices of the construction manager and selected subcontractors from January 10, 2011, through February 11, 2011, and audited the Wildcat Activity Center (WAC) project focusing on the construction management policies and procedures and internal controls and processes in effect at that time.

Our study and evaluation did not reveal any significant construction management or internal control problems or weaknesses that would be considered pervasive in their effects on construction activity controls. However, we did identify other reportable weaknesses that are described in the executive summary and body of this report. In our opinion, the operational and administrative controls in effect for the WAC project were sufficient to meet the overall audit objective stated below.

As a result of changing conditions and the degree of compliance with procedures, the effectiveness of controls changes over time. Specific limitations that may hinder the effectiveness of an otherwise adequate system of controls include, but are not limited to, resource constraints, faulty judgments, unintentional errors, circumvention by collusion, and management overrides. Establishing controls that would prevent all these limitations would not be cost-effective; moreover, an audit may not always detect these limitations.

The following summary provides management with an overview of conditions requiring attention. Areas of review not mentioned in this section were found to be satisfactory. Numbers in brackets [ ] refer to page numbers in the report.

PROJECT DEVELOPMENT AND DESIGN [7]

Two extra service authorization letters for architectural services related to additional design-phase development costs, construction-phase design costs, reimbursable expenses, and additional construction administration were not authorized until after the services were performed.

PRE-CONSTRUCTION AND BID PROCESS [7]

The campus failed to issue a Notice to Proceed after executing the guaranteed maximum price construction agreement for Phase II of the WAC project.

CHANGE ORDER ADMINISTRATION [8]

Change orders were not always properly approved. In addition, labor rate overcharges and an erroneous labor burden by one trade subcontractor inflated labor costs by $18,470. Further, the inclusion of erroneous second-tier subcontractor costs inflated change orders for one trade subcontractor by $29,038.
INTRODUCTION

BACKGROUND

In March 2005, the California State University, Chico (CSUC) students approved an increase in student body fees to construct and operate a recreation center. In February 2006, the campus executed an agreement with John F. Otto, Inc., the construction manager (CM), for pre-construction services that included design and bid phase services for the Wildcat Activity Center (WAC). At the same time, the campus executed an agreement with the architectural firm of Sasaki Associates, Inc., for services related and incidental to the design and construction of the WAC project. In July 2006, the Board of Trustees (BOT) approved schematic plans for the WAC with funding from issuance of systemwide revenue bonds, to be paid from student fees.

In September 2006, the campus executed an agreement with the CM for Phase I, site preparation services, at a construction cost of $1,114,731 and issued the Notice to Proceed on September 28, 2006. This agreement allowed the CM to begin the extensive site preparation, including the demolition of the two warehouses that were located on the site. In June 2007, the campus executed another agreement with the CM for Phase II, offsite utility infrastructure, at a construction cost of $2,216,534. This agreement allowed the CM to begin the construction of underground gas, water, and sewage utilities surrounding the WAC project site. In August 2007, the campus executed another agreement with the CM for Phase III, main construction phase services, at a construction cost of $43,828,301 and issued a Notice to Proceed on September 4, 2007. The expected contract completion date was April 15, 2009, and it was subsequently extended to May 30, 2009. The State Fire Marshal granted a Certificate of Occupancy on July 16, 2009, and the campus filed Notices of Completion on March 26, 2007, December 23, 2008, and August 3, 2009, for Phase I, II, and III, respectively.

The WAC is a two-story, 118,500-square-foot facility that includes a weight and fitness area, four multi-purpose studios for dance and aerobics, an indoor track, three gymnasiums, a multi-activity court, a rock climbing wall, an aquatics area and spa, a men’s and women’s locker room meeting and lounge space, and administrative offices. In addition, numerous site improvements were made, including the removal of two existing campus warehouses and the preparation of the proposed site that encompassed the two warehouses, a vacated city street, and a railroad spur that had been contaminated by industrial activities. Designed to meet the requirements of the Leadership in Energy and Environmental Design (LEED) silver rating, the project received a gold rating because of sustainable features including, but not limited to, the recycling of material during site demolition; a high-efficiency heating, ventilation, and air-conditioning system; solar pool heating; and extensive use of recycled materials during daily operations. LEED is a third-party certification program begun in 1999 by the United States Green Building Council and is a nationally accepted benchmark for the design, construction, and operation of high-performance green buildings. LEED recognizes performance in five key areas of human and environmental health: sustainable site development, water savings, energy efficiency, materials selection, and indoor environmental quality.

The CSUC campus managed the WAC project, and it chose the Construction Manager at Risk (CM at Risk) with Guaranteed Maximum Price (GMP) delivery method. In this method, a construction management firm chosen by a competitive bidding process provides all or significant portions of design and construction administrative services and takes part in establishing the GMP. The CM at Risk acts as
the general contractor during construction, assumes the risk of subcontracting the work, and guarantees completion of the project. The liability for the success in completing the project on time and in budget lies with the CM, and not with the university. Further, there is a potential for cost savings should the project be completed below the GMP.

Executive Order (EO) 672, Delegation of Capital Outlay Management Authority and Responsibility, dated July 25, 1997, delegates to campus presidents the authority to manage directly state and non-state funded capital outlay projects. The chancellor’s office issues this delegated authority to the campus subject to its compliance with the capital outlay certification procedure. To comply, the campus submits a request for Delegation of Capital Outlay Management Authority to the Certification Review Board (CRB) for review. Then the executive vice chancellor and chief financial officer in the chancellor’s office must approve the request. The campus president is responsible for ensuring that he or she exercises delegated authority in compliance with applicable statutes, regulations, and policies of the BOT; the campus manages capital projects via a process consistent with the provisions of the State University Administrative Manual (SUAM); and the campus has in place appropriate internal controls and processes to ensure that responsibilities are carried out in a manner consistent with the campus capital outlay management plan submitted with the request for delegated authority.

The certification procedure required by EO 672 includes submission of a capital outlay management plan, which defines the campus organizational and operational structure and expenditure authority, and serves as the campus policies and procedures for the administration of construction activities. Updated plans are to be submitted when campus operational structure changes are made which impact the plan. Certification is continuous unless a Capital Planning, Design and Construction (CPDC) post-project performance review determines that problems were caused by campus negligence, in which case the CRB may recommend that the campus be placed on probation. The CRB may ultimately recommend that certification be withdrawn if identified operational/management deficiencies are not remedied.

For those campuses that are not certified, the chancellor’s office may execute a Memorandum of Delegation for a capital outlay project, which delegates administration, including construction management, to the campus. The CPDC construction management unit may also perform construction administration and management.

EO 666, Delegation of Professional Appointments Related to Capital Outlay Projects and Campus Physical Development, dated March 7, 1997, delegates the authority to each campus president or designee to make all professional appointments relative to capital outlay projects and campus physical development. Further, the campus president or designee is responsible for ensuring compliance with all applicable statutes and regulations, BOT policies, and SUAM guidelines; and the use of systemwide standardized architectural, engineering, and other professional appointment contract forms.

The SUAM, in part, contains an overview of all CPDC policies and procedures associated with the capital outlay process. SUAM §9700 through §9843, Construction Management for Public Works Contracts, describe the requirements for preparing and administering public works contracts under the provisions of Public Contract Code §10700 et seq. SUAM §9200 through §9212, Professional Services for Campus Development, describe the requirements for developing and administering professional
services agreements with service providers such as architects and engineers and for testing services and project-related studies.

The California State University (CSU) *Construction Management Procedures Manual* contains the CSU construction management policies and procedures that apply to a project, and each construction administrator, project manager, inspector of record, campus representative, and design professional is required to use this manual as appropriate during the construction administration of a project.

**PURPOSE**

The overall audit objective was to ascertain the effectiveness of construction management policies and procedures and internal controls and processes related to the administration of construction activities and, specifically, the Wildcat Activity Center project.

Within the overall audit objective, specific goals included determining whether:

- Delegated authority to manage capital outlay projects exists, and the campus capital outlay management plan is current for campus-managed projects.

- Project development is in accordance with statutory and CSU policy requirements, including required BOT and CPDC approvals.

- Administration and management of the project provide effective internal controls and processes consistent with the campus capital outlay management plan and the SUAM.

- Professional appointments are in accordance with statutory requirements, BOT policy, and the SUAM; and systemwide standardized professional appointment contract forms are used, approved by the Office of General Counsel, and fully executed prior to performance of work.

- Extra services are appropriate, authorized, and separately tracked; and an evaluation is performed for each professional service provided.

- The bidding process is rigidly controlled, performed in accordance with statutory requirements and the SUAM, and incorporates the contract documents maintained on the CPDC website.

- Contract documents are complete, routed to the Office of General Counsel as appropriate, and timely executed; required contract bonds and insurance are received; and a Notice to Proceed is issued.

- Subcontractors are adequately monitored, and requests for subcontractor substitutions are handled in accordance with statutory requirements and the SUAM.

- Operational and administrative controls ensure maintenance of financial accountability and completion of the project within the approved scope, schedule, and budget.
INTRODUCTION

- Contract and service agreement payments are adequately supported, appropriately approved, and timely paid; and retention is handled in accordance with statutory requirements and the SUAM.
- Equipment is procured in the most economical method; purchased materials meet specifications required by construction documents and drawings; and all required inspections and tests are timely and properly performed and adequately documented.
- Change orders are appropriately approved, supported, accurately priced, and sufficiently tracked; and construction allowances and contingency balances are adequately administered and controlled.
- Project completion is adequately administered, including completion of pre-final/final inspections, punch list items, project closeout checklist, and Notice of Completion; preservation of project files, equipment manuals/warranties, and spare parts/materials; and resolution of any liquidated damages.

SCOPE AND METHODOLOGY

The scope of audit included, but was not limited to, the review of design budgets and costs; the bid and award process; invoice processing and payment; change orders; construction management, architectural, and engineering services; use of major equipment/materials; the closeout process; administration of liquidated damages; and overall project cost accounting and reporting. This included any transactions or activity performed by the campus, construction management firm, and trade subcontractors.

Our study and evaluation were conducted in accordance with the International Standards for the Professional Practice of Internal Auditing, issued by the Institute of Internal Auditors, and included the audit tests we considered necessary in determining that operational and administrative controls are in place and operative. This review emphasized, but was not limited to, compliance with state and federal laws, BOT policies, and Office of the Chancellor and campus policies, letters, and directives.

We focused primarily on the operational and administrative controls in effect for the Wildcat Activity Center project with an emphasis on compliance with the CSU Construction Management Procedures Manual, SUAM policies and procedures associated with the capital outlay process, the campus capital outlay management plan, and construction contract general conditions. We evaluated the effectiveness of construction management policies and procedures and adequacy of internal controls and processes, and sought opportunities for improvement to further the success of CSU’s capital outlay program.

Specifically, we reviewed and tested:

- Delegation of construction management authority.
- Review and approval of project design, budget, and funding.
- Professional services agreements and any extra services changes.
- Administration of the bid and award process.
- Contract execution and required contract bonds and insurance.
- Subcontractors and subcontractor substitutions.
- Contract and service agreement payment processing.
- Procurement of major equipment and materials.
Performance of required inspections and tests.
Review, approval, and tracking of change orders.
Direct labor and associated burden.
Construction management and overall project cost accounting and reporting.
Construction allowances and contingency balances.
Administration of the project closeout process and resolution of any liquidated damages.
OBSERVATIONS, RECOMMENDATIONS, AND CAMPUS RESPONSES

PROJECT DEVELOPMENT AND DESIGN

Certain extra service authorization (ESA) letters were not authorized until after the specified services were performed.

We reviewed 14 ESA letters for architectural services related to additional design-phase development costs, construction-phase design costs, reimbursable expenses, and additional construction administration, and we found that two of the letters were not authorized until after the services were performed.

State University Administrative Manual (SUAM) §9208.02 states that extra services for professional service agreements call for the provision of services to be authorized in writing in advance.

SUAM §9210.03 states that ESA letters shall define the scope of work, deliverables and time frame for completion of work, and a fee or fee limit, and require a countersignature by the service provider.

The director of planning, design, and construction (PDC) stated that the ESA letters were not authorized in a timely manner due to oversight.

The absence of complete, written ESA letters increases the risk of misunderstandings and miscommunication regarding rights and responsibilities.

Recommendation 1

We recommend that the campus reiterate to staff that ESA letters must be authorized prior to the performance of the specified services.

Campus Response

We concur with the recommendation. Policy has been reiterated to all project managers that an executed copy of the ESA must be on file prior to requesting these services from the project firm.

Completion date: April 7, 2011

PRE-CONSTRUCTION AND BID PROCESS

The campus failed to issue a Notice to Proceed after executing the guaranteed maximum price construction agreement for Phase II of the Wildcat Activity Center (WAC) project.

SUAM §9781 states that after the contract is fully executed, the construction administrator shall issue a Notice to Proceed to the contractor with a copy to the project team, providing the contractor with the official start and end dates, duration of the project, and liquidated damages.
The PDC director stated that the Notice to Proceed was not issued for Phase II of the WAC project due to oversight.

Failure to issue a Notice to Proceed increases the risk of project delays due to misunderstandings and miscommunications regarding rights and responsibilities.

**Recommendation 2**

We recommend that the campus reiterate SUAM requirements to staff to ensure that Notices to Proceed are issued after construction agreements are fully executed.

**Campus Response**

We concur with the recommendation. SUAM policy has been reiterated to all project managers that a Notice to Proceed must be issued for all phases of construction.

Completion date: April 7, 2011

**CHANGE ORDER ADMINISTRATION**

**APPROVAL**

Change orders were not always properly approved.

We reviewed 77 change orders and found that 18 credit change orders were not approved by the project architect.

The California State University *Construction Management Project Administration Reference Manual* §4.05a states that the design professional shall complete four original copies of the contract change order form, all four copies with original signatures (including the design professional’s signature), attach to each copy all back-up materials, and send all four copies to the contractor for signature.

The PDC director stated that the project architect was not responding in a timely manner to change orders that reduced the project scope, so the campus decided to forego the architect approval on any change order that reduced scope and created a credit change order.

Inadequate approval of change orders increases the risk that errors and irregularities will not be detected in a timely manner and may result in unwarranted changes and excess charges and expenses.

**Recommendation 3**

We recommend that the campus reiterate to staff that change orders are to be approved by the project architect.
Campus Response

We concur. The campus has reiterated to project managers that change orders must be approved according to authorized dollar thresholds.

Completion date: April 7, 2011

LABOR RATES AND BURDEN

Administration of trade subcontractor labor rates and associated labor burden needed improvement.

We reviewed hourly labor rates and the associated labor burden charged by two trade subcontractors for a sample of change orders, and we found that one subcontractor charged an inflated labor rate and labor burden rate for federal insurance contribution payments. The inclusion of these inflated rates increased the labor cost for this trade subcontractor by $18,470.

The Contract General Conditions for CM at Risk with Guaranteed Maximum Price Projects §6.01.b (1) states that the construction manager (CM) and trade contractors shall submit a fully detailed breakdown of the cost of every labor classification to be utilized on a proposed change on the hourly labor rate worksheet. The unit cost of labor shall be an accurate accounting of actual costs being paid.

The PDC director stated that the construction management firm should have reviewed the labor rate and labor burden components before submitting the change orders to the campus.

Failure to ensure that hourly labor rates and the associated labor burden are correct may result in increased project costs.

Recommendation 4

We recommend that the campus:

a. Pursue recovery of the $18,470 in inflated labor costs charged by the trade subcontractor and determine, as appropriate, if other change order work performed by the subcontractor was cost-inflated in a similar manner. The results of this recovery should be reported to the chancellor’s office Capital Planning, Design and Construction (CPDC) department.

b. Conduct staff training to ensure that hourly labor rates and the associated labor burden charged by trade subcontractors are properly reviewed and accurate in accordance with §6.00, Changes in the Work, of the Contract General Conditions for CM at Risk with Guaranteed Maximum Price Projects.
Campus Response

We concur with the recommendation.

a. The campus will pursue recovery of the $18,470 in inflated labor costs resulting from the trade subcontractor. The $18,470 results from various change orders with same trade subcontractor. All inflated costs were identified during audit. The results of this recovery will be reported to the chancellor’s office CPDC department.

b. Training will be conducted to ensure staff compare labor rate sheets against certified payroll and require recomputation of any labor rate sheets calculated in error.

Expected completion: June 30, 2011

SECOND-TIER SUBCONTRACTORS

Administration of payments to second-tier subcontractors needed improvement.

We reviewed a sample of payments to second-tier subcontractors charged by a trade subcontractor and found a discrepancy between source documents maintained within the trade subcontractors’ job files and accounting systems and the amount charged to the campus. The inclusion of erroneous second-tier subcontractor costs inflated change orders for this trade subcontractor by $29,038.

The Contract General Conditions for CM at Risk with Guaranteed Maximum Price Projects §6.01.b (5) states that for any portion of the work performed by a subcontractor (any tier), the CM shall furnish to the Trustees a detailed estimate prepared and signed by the subcontractor of the cost of the subcontractor for performing the changed work.

The PDC director stated that the trade subcontractor received an estimate to have a second-tier subcontractor perform the change order work, but the trade subcontractor decided to self-perform the work after receiving the estimate. She also stated that the change order work was performed, but the actual cost of the work was not provided by the trade subcontractor.

Failure to adequately review payments to second-tier subcontractors may result in increased project costs.

Recommendation 5

We recommend that the campus pursue recovery of the $29,038 of the second-tier subcontractor erroneous costs that inflated change orders for the subcontractor. The results of this recovery should be reported to the chancellor’s office CPDC department.

Campus Response

We concur with the recommendation. However, we will pursue recovery in the amount of the actual
costs of the painting less the overage. The contractor who actually performed the services will be requested to submit an invoice for work provided. The campus will pursue recovery of the balance once actual costs are determined. The results of this recovery will be reported to the chancellor’s office CPDC department.

Expected completion: June 30, 2011
## APPENDIX A:
### PERSONNEL CONTACTED

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<tr>
<th>Name</th>
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<tr>
<td><strong>Office of the Chancellor</strong></td>
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<tr>
<td>Elvyra San Juan</td>
<td>Assistant Vice Chancellor, Capital Planning, Design and Construction</td>
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<tr>
<td><strong>California State University, Chico</strong></td>
<td></td>
</tr>
<tr>
<td>Paul J. Zingg</td>
<td>President</td>
</tr>
<tr>
<td>Lorraine Hoffman</td>
<td>Vice President for Business and Finance</td>
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<tr>
<td>Lynda Miracle</td>
<td>Director of Planning, Design and Construction</td>
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June 6, 2011

Larry Mandel
University Auditor
California State University
Office of the University Auditor
401 Golden Shore
Long Beach, CA 90802-4210

Dear Mr. Mandel:

Please find enclosed our campus response to recommendations 1 through 5 of the Incomplete Draft Audit Report (11-10) – Wildcat Activity Center.

Recommendations 1-3 have been completed and we expect completion of recommendations 4 and 5 by June 30, 2011.

If you need further information, please contact me.

Sincerely yours,

[Signature]

Lorraine B. Hoffman
Vice President for Business and Finance

Enclosure
Cc: Lynda Miracle
    Jan Burnham
CONSTRUCTION
CALIFORNIA STATE UNIVERSITY,
CHICO
WILDCAT ACTIVITY CENTER
Audit Report 11-10

PROJECT DEVELOPMENT AND DESIGN

Recommendation 1

We recommend that the campus reiterate to staff that ESA letters must be authorized prior to the performance of the specified services.

Campus Response

We concur with the recommendation. Policy has been reiterated to all project managers that an executed copy of the ESA must be on file prior to requesting these services from the project firm.

Completion Date: April 7, 2011

PRE-CONSTRUCTION AND BID PROCESS

Recommendation 2

We recommend that the campus reiterate SUAM requirements to staff to ensure that Notices to Proceed are issued after construction agreements are fully executed.

Campus Response

We concur with the recommendation. SUAM policy has been reiterated to all project managers that a Notice to Proceed must be issued for all phases of construction.

Completion Date: April 7, 2011

CHANGE ORDER ADMINISTRATION

APPROVAL

Recommendation 3

We recommend that the campus reiterate to staff that change orders are to be approved by the project architect.
Campus Response

We concur. The campus has reiterated to project managers that change orders must be approved according to authorized dollar thresholds.

Completion Date: April 7, 2011

LABOR RATES AND BURDEN

Recommendation 4

We recommend that the campus:

a. Pursue recovery of the $18,470 in inflated labor costs charged by the trade subcontractor and determine, as appropriate, if other change order work performed by the subcontractor was cost-inflated in a similar manner. The results of this recovery should be reported to the chancellor’s office Capital Planning, Design and Construction (CPDC) department.

b. Conduct staff training to ensure that hourly labor rates and the associated labor burden charged by trade subcontractors are properly reviewed and accurate in accordance with $6.00, Changes in the Work, of the Contract General Conditions for CM at Risk with Guaranteed Maximum Price Projects.

Campus Response

We concur with the recommendation.

a. The campus will pursue recovery of the $18,470 in inflated labor costs resulting from the trade subcontractor. The $18,470 results from various change orders with same trade subcontractor. All inflated costs were identified during audit. The results of this recovery will be reported to the chancellor’s office CPDC.

b. Training will be conducted to ensure staff compare labor rate sheets against certified payroll and require re-computation of any labor rate sheets calculated in error.

Expected Completion: June 30, 2011

SECOND-TIER SUBCONTRACTORS

Recommendation 5

We recommend that the campus pursue recovery of the $29,038 of the second-tier subcontractor erroneous costs that inflated change orders for the subcontractor. The results of this recovery should be reported to the chancellor’s office CPDC department.

Campus Response

We concur with the recommendation. However, we will pursue recovery in the amount of the actual costs of the painting less the overage. Contractor who actually performed the services will be requested to submit an invoice for work provided. The campus will pursue recovery of the balance
once actual costs are determined. The results of this recovery will be reported to the chancellor’s office CPDC.

Expected Completion: June 30, 2011
June 27, 2011

MEMORANDUM

TO: Mr. Larry Mandel
   University Auditor

FROM: Charles B. Reed
       Chancellor

SUBJECT: Draft Final Report 11-10 on the *Wildcat Activity Center*,
         California State University, Chico

In response to your memorandum of June 27, 2011, I accept the response as
submitted with the draft final report on the *Wildcat Activity Center*, California
State University, Chico.

CBR/amd